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## Attorneys for Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

In re:

J & D WILSON AND SONS  
DAIRY,

## Debtor-in-Possession.

Case No. 14-10588-B-11  
Chapter 11  
DC No. UST-1

Date: September 11, 2014  
Time: 9:00 a.m.  
Place: United States Bankruptcy Court  
Department B, Courtroom  
2500 Tulare Street, Fifth Floor  
Fresno, California  
Judge: Honorable W. Richard Lee

**OPPOSITION TO UNITED STATES TRUSTEE'S  
MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. § 1112(b)**

**TO THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT  
OF CALIFORNIA:**

J & D Wilson and Sons Dairy, Debtor-in-Possession, (“Debtor”) hereby opposes the *United States Trustee’s Motion to Dismiss Case Pursuant to 11 U.S.C. § 1112(b)* filed on August 13, 2014, and represents the following:

1. Debtor filed a voluntary petition under Chapter 11 on February 7, 2014. As of the date of the filing of this opposition, Debtor has not filed a disclosure statement or plan of reorganization.

1           2.     A court may not dismiss a case without cause. 11 U.S.C. § 1112(b)(1). The  
 2 United States Trustee states that the Debtor's failure to file a plan and disclosure statement  
 3 constitutes cause for dismissal of Debtor's case. However, delay by a debtor must be both (a)  
 4 unreasonable and (b) prejudicial to creditors. *See In re AdBrite Corp.*, 290 B.R. 209 (Bankr.  
 5 S.D. N.Y. 2003). Further, the unique circumstances of each case control whether failure to file  
 6 a plan is unreasonable delay. *See In re De Jonghe* 334 B.R. 760, 771 (B.A.P. 1st Cir. 2005).

7           3.     In the case at hand, Debtor's delay in filing a plan is not unreasonable due to the  
 8 complexity of the case and the complexity of the agreement sought by Wells Fargo Bank.

9           4.     Debtor's case is complicated with multiple constituencies that need to be  
 10 negotiated with, including (a) Wells Fargo Bank as operating lender, (b) Farm Credit West as  
 11 mortgage lender, (c) C.A. Vanderham & Sons Dairy ("CA Vanderham") as landlord and large  
 12 unsecured creditor, (d) John Deere as a secured equipment lender and lessor, and (e) general  
 13 unsecured creditors including Western Milling which holds a large unsecured claim that is  
 14 secured by a deed of trust against real property owned by CA Vanderham, which may give rise  
 15 to an indemnity claim if CA Vanderham's property is used to pay Western Millings claim. The  
 16 interplay between these constituencies, possible partial change of ownership of Debtor,  
 17 unwinding of related party connections, and consideration of tax impacts of the changes add to  
 18 the complexity of the case. Furthermore, Debtor must seek to restructure more than \$26  
 19 million in debt through the plan. The time it has taken to formulate a plan is not unreasonable  
 20 because of the complexity and amount of debt at issue.

21           5.     Debtor has been working productively and in good faith with creditors including  
 22 Wells Fargo Bank, Farm Credit West, and CA Vanderham to produce a plan that is both  
 23 feasible and in the best interests of Debtor and creditors. While these negotiations have not yet  
 24 produced plan that has been filed, Debtor and these creditors have made substantial progress  
 25 toward the agreement on a consensual plan. Debtor and Wells Fargo Bank have reached an  
 26 agreement in concept regarding the terms of a plan except for one covenant. Debtor and Farm  
 27 Credit West have reached an agreement in concept regarding the terms of a plan except for one  
 28 point. Debtor has not filed a plan to date because negotiations with these constituencies has

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been ongoing and productive, and Debtor did not want to derail negotiations by filing a plan that had not been agreed upon amongst the parties.

6. Debtor will file a disclosure statement and plan that is confirmable on or before September 3, 2014, whether or not a final agreement with all of Debtor's creditors is reached.

7. For all of these reasons, Debtor's delay in filing a disclosure statement and plan has not been unreasonable.

8. No cause exists to dismiss Debtor's case for delay because (a) Debtor's delay has been reasonable under the circumstances, and (b) the United States Trustee has not shown that the debtor's delay has been prejudicial to creditors. Additionally, the United States Trustee has not identified unique circumstances to this case that would allow the Court to grant the motion. Therefore, the United States Trustee has not established that cause exists to dismiss Debtor's case.

## CONCLUSION

**WHEREFORE**, Debtor prays that:

1. The Court deny the United States Trustee's Motion to Dismiss; and
  2. For other and further relief to Debtor as the Court deems proper.

Date: August 20, 2014

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BY

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